IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2666 OF 1991

Shri Janardan Ramchandra Chavan,

Age about 50 yrs,Occu:Cobbler residing at

831,Samata Sahakari Scty,Padmavati,Pune-9

deceased through his heirs

1A) Smt Sushila Janardan Chavan

B) Shri Ravindra Janardan Chavan

C) Shri Gajendra Janardan Chavan

D) Shri Bhaskar Janardan Chavan .. Petitioners

vs

1. Shri Baburao Vithal Chavan

Age about 85 yrs, Occu: Nil, residing at

226, Mangalwar Peth, Pune-11.

since deceased through his legal heirs

1-A) Shri Jijaba Baburao Chavan

Adult Occu: Service R/o Flat No.Plot No.226,

Mangalwar Peth, Pune-11.

.. ... Respondents

Mr.C.D.Deshmukh h/f Mr.A.V.Anturkar for Petitioner

CORAM: D.G.KARNIK, J

DATE: 6TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner challenges the judgment and order dated 6th April, 1991 passed by the learned XIth Additional District Judge, Pune dismissing the petitioner's appeal and confirming the decree for possession passed by the Small Causes Court, Pune.

2. The respondent is an owner of the property bearing No,.831 Samta Cooperative Housing Society. The petitioner is a tenant occupying one room therein (for short the suit premises). The suit premises were let out to the petitioner in the year 1975 on the monthly rent of Rs.20/-. The petitioner spent an amount of Rs.500/- towards painting and repairs and the amount spent by the petitioner was adjusted in rent up to 31st October, 1997. The petitioner was liable to pay rent from 1st November, 1997. As the petitioner did not pay the rent, by a notice to quit dated 5th March, 1984 the respondent terminated the tenancy of the petitioner and also demanded the arrears of rent from 1st November, 1977 to 29th February 1984. The petitioner neither paid the rent nor raised any dispute regarding the standard rent within one month of the receipt of the notice. The respondent therefore filed a suit bearing Civil Suit No.2163 of 1984 in the Small Causes Court, Pune for possession on the ground of default. The respondent

also claimed possession on the ground of reasonable and bonafide requirement, nuisance and annoyance. The trial Court negatived the claim for possession on the ground of reasonable and bonafide requirement as also nuisance and annoyance. The trial Court however held that the petitioner was a defaulter in payment of rent and had failed and neglected to pay the rent within one month of the receipt of notice of demand and therefore a decree for possession was passed under section 12 (3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. (for short the Act). The appeal filed by the petitioner was dismissed by a judgment and order dated 6th April, 1991. That judgment is impugned in this writ petition.

3. Learned counsel for the petitioner submits that the concurrent finding recorded by the Courts below that the petitioner was a defaulter is erroneous and perverse. Learned counsel submits that after receipt of the notice of demand, the petitioner had paid the arrears of rent to the respondent and therefore, the Court ought not to have passed a decree for possession. Case of the petitioner was that he had earlier sent a money order which was refused and therefore he had paid the amount in the presence of panchas. Therefore on the date of the suit notice

rent was not due and he was not a defaulter. No receipt for payment of the rent was produced by the petitioner. No pancha in whose presence rent was alleged to have been paid was examined. Both the Courts below have disbelieved the evidence of the petitioner of payment of the rent. The finding reached by the Courts below that the petitioner was in arrears of rent on the date of notice and has not paid the rent within one month is possible and see no reason to interfere in exercise of writ jurisdiction under Article 227 of the Constitution of India.

4. Hence, there is no merit in the petition which is hereby dismissed. Rule discharged with costs. Request of the learned counsel for the petitioner for stay is rejected.

D.G.KARNIK, J